possible the contract should be interpreted as bilateral; if plainly unilateral, then the established rules of law should govern.[12]

R. L. H. Jr.

LABOR LAW: STRIKES: BOYCOTTS: PICKETING—Labor litigation during the past year has been prolific, reflecting, for the most part, the conflict engendered by the nation-wide open-shop campaign. On the legal side, as on the industrial, labor has come off emphatically second best. Outstanding is the case of Duplex Printing Company v. Deering,[1] which, by a strained and illiberal interpretation of the Clayton Act,[2] denies to labor the weapon of the secondary boycott. The vicious influence of another decision of the Supreme Court, of several years standing,[3] is clearly traceable in several holdings extending the doctrine of Lumley v. Gye[4] so as to render tortuous the procurement of a strike of employees working under a contract of employment, even though the contract by its own terms is terminable at the will of either party.[5] Another Federal case is important for a holding that interference, by strike or otherwise, with the manufacturing of goods intended for an interstate market is not an interference with interstate commerce.[6] In the state courts most of the cases have dealt with the question of picketing, and the courts have almost uniformly granted injunctions against the picketing involved. In many instances the facts show clearly that the picketing enjoined was violent and physically intimidating in nature.[7] Several New York dicta, however, deny the possibility of peaceful picketing,[8] although the established New York rule holds otherwise.[9] On the other hand, these dicta are more than counterbalanced by a square holding in the same jurisdiction that picketing is not *per se* unlawful.[10] In line with the prevailing retrogressive tendency are cases holding unjustifiable strikes to compel an employer to enter into a contract

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[12] Williston on Contracts (1920 ed.) 60, and cases cited there.

[1] (1920) 254 U. S. 443, 65 L. Ed. 176, 41 Sup. Ct. Rep. 172.

[2] 38 Stat. at L. 730, Comp. Stat. § 8835a, 9 Fed. Stat. Anno. (2d ed.) p. 730.

[3] Hitchman Coal & Coke Co. v. Mitchell (1917) 245 U. S. 229, 62 L. Ed. 260, 39 Sup. Ct. 65; L. R. A. 1918C 497, Ann. Cas. 1918B 461.

[4] (1853) 2 E & B 216, 22 L. J. Q. B. 463.

[5] Floersheim v. Schlesinger (1921) 187 N. Y. S. 891; McMichael v. Atlanta Envelope Co. (1921) 108 S. E. 226. (Ga.).

[6] Gable v. Vonnegut (1921) 274 Fed. 66. This modifies the rule as laid down in Loewe v. Lawlor (1908) 208 U. S. 274, 52 L. Ed. 488, 28 Sup. Ct. Rep. 301.

[7] Skolny v. Hillman (1921) 114 N. Y. Misc. Rep. 571, 187 N. Y. S. 706; Grand Shoe Co. v. Childrens' Shoe Workers' Union (1920) 187 N. Y. S. 886; Jaeckel v. Kaufman (1920) 187 N. Y. S. 889; Benito Rovira Co. v. Yampolsky (1921) 187 N. Y. S. 894; United Traction Co. v. Droogan (1921) 189 N. Y. S. 39; Marks Anaheim Inc. v. Hillman (1921) 189 N. Y. S. 369.

[8] Schwartz & Jaffee v. Hillman (1921) 189 N. Y. S. 21; Pre'Catalan, Inc. v. International F. of W. (1921) 189 N. Y. S. 29

[9] Martin, Modern Law of Labor Unions, p. 234.

[10] Piermont v. Schlesinger (1921) 188 N. Y. S. 35.

of employment for a stated term,[11] and to compel an employer to adopt collective bargaining.[12] Finally, of great interest and far-reaching importance—for the development of the concept of police power as well as for labor law—are People v. United Mine Workers of America,[13] holding constitutional compulsory arbitration in the coal industry in Colorado, and State v. Howat,[14] holding constitutional the recently created Kansas Court of Industrial Relations, consisting of a permanent forum for the compulsory adjudication of labor disputes in essential industries.

In California the major issues of labor law being mooted in other jurisdictions have long been settled, in decisions of extreme liberality and refreshing clarity. Thus, it has been established that labor has the right to strike for any purpose it sees fit[15] and that the boycott, in all its forms, is legal.[16] But although the procuring of a breach of contract is not generally a tort in California,[17] it has been held to be such when the contract is one of employment, in Patterson Glass Company v. Thomas,[18] a decision of the District Court of Appeal of doubtful authority—the net result being that the doctrine of Lumley v. Gye is repudiated where it ought to be adopted, and adopted in the one situation where it ought not apply. Furthermore, California, in spite of its general liberality, has, curiously enough, followed the illiberal minority view on the question of picketing. In the leading case of Pierce v. Stablemen's Union,[19] Justice Henshaw said: "A picket, in its very nature, tends . . . . to drive business away . . . . not by the legitimate methods of persuasion, but by the illegitimate means of physical intimidation and fear;" and although this statement was not necessary to the decision, and although the two subsequent cases following this view are decisions in the District Court of Appeal,[20] nevertheless it has generally been taken to represent the settled California law.

But the decision of the Supreme Court in the case of *Southern California Iron & Steel Company v. Amalgamated Association of Iron, etc. Workers,*[21] though granting an injunction against the

[11] Cooks' etc. Union v. Papageorge (1921) 230 S. W. 1086 (Tex.).

[12] United Shoe Machinery Corp. v. Fitzgerald (1921) 130 N. E. 86 (Mass.).

[13] (1921) 201 Pac. 54 (Colo.).

[14] (1921) 198 Pac. 686 (Kan.). See also note in 31 Yale Law Journal, 75; and article, 30 Yale Law Journal, 456.

[15] Parkinson v. Building Trades' Council (1908) 154 Cal. 5, 98 Pac. 1027, 21 L. R. A. (N. S.) 550.

[16] Parkinson v. Building Trades' Council, supra, n. 15.

[17] Boyson v. Thorn (1893) 98 Cal. 578, 33 Pac. 492.

[18] (1919) 41 Cal. App. 559, 183 Pac. 190. This decision does not even mention Boyson v. Thorn, supra, n. 17; and although Boyson v. Thorn itself contains a dictum that interference with the master-servant relation is actionable, this dictum was founded upon the former wording of Cal. Civ. Code § 49, which has since been amended. Cal. Stats. 1905, p. 68.

[19] (1909) 156 Cal. 70, 103 Pac. 324.

[20] Moore v. Cooks' etc. Union, (1919) 39 Cal. App. 538, 179 Pac. 417; Rosenberg v. Retail Clerks' Ass'n. (1918) 39 Cal. App. 67, 177 Pac. 864.

[21] (Aug. 4, 1921) 62 Cal. Dec. 162, 200 Pac. 1.

picketing therein involved, seems to repudiate the doctrine that picketing in all forms is inherently unlawful. The language used, however, leaves uncertain where the line is to be drawn between acts constituting lawful, and acts constituting unlawful, picketing. Actual physical violence to person or property is of course unlawful. Similarly, threats of physical violence ought to be held unlawful, whether express, or conveyed by means other than words, as by numbers. Likewise, there is room for disagreement as to persistent, though peaceful, attempts to persuade one who does not desire to be addressed. But mere abusive language, not amounting to threats, or the so-called "moral intimidation" secured by threats of unpopularity and social ostracism, stand upon a different footing. Such acts are not unlawful ordinarily, and no sound policy dictates that they be transformed into torts in the labor field. Finally, picketing consisting merely in the conveying of information, as by single men carrying banners signifying that a certain store is "unfair" etc., can by no stretch of language be made to come within the category of violence or intimidation, and should clearly be held legal. A holding embodying the foregoing principles, together with a decision overruling the doubtful authority of the Patterson case, would go far to complete consistently the liberal system which the earlier California cases have already substantially achieved.[22]

H. R.

LIBEL: CONDITIONAL PRIVILEGE: NEWSPAPER PUBLICATIONS CONCERNING PUBLIC OFFICERS—Does a newspaper stand in such a relation to the people of the community in which it is published that publications of false and libellous statements of fact concerning a public officer or candidate for public office are conditionally privileged?[1] The majority view[2] holds that there is no privilege and

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[22] For a general summary of recent trends in labor law, see 30 Yale Law Journal, 280, 404, 601, 618, 736. For an extensive summary of the whole field, see note in 6 A. L. R. 909.

[1] It is clear that the courts are agreed that by becoming a public officer, or candidate for public office, one places before the public his character and conduct, so far as they are relevant to his fitness for the office which he holds or seeks, and cannot complain of fair comment and criticism thereon in newspapers. Schomberg v. Walker (1901) 132 Cal. 224, 229, 64 Pac. 290; Hallam v. Post Publishing Co. (1894) 59 Fed. 530, 8 C. C. A. 201; Hamilton v. Eno (1880) 81 N. Y. 116; 25 Cyc. 402, n. 80; L. R. A. 1918E 47; Odgers, Libel and Slander (5th ed.), p. 193.

This right to comment upon known facts and upon character is not based upon qualified privilege. Fair comment is never libellous, whereas privilege is immunity from liability for a libel. Street, Foundations of Legal Liability 303; Campbell v. Spottiswoode (1863) 3 Best and S. 769, 122 Eng. Rep. R. 288; Merrey v. Guardian Publishing Co. (1909) 79 N. J. L. 177, 74 Atl. 464; 23 Law Quarterly Review, 97; 24 Law Quarterly Review, 235.

[2] Hallam v. Post Publishing Co. (1894) 59 Fed. 530, 8 C. C. A. 201; Rearick v. Wilcox (1876) 81 Ill. 77; Burt v. Advertiser Newspaper Co. (1891) 154 Mass. 238, 28 N. E. 1, 13 L. R. A. 97. For other authorities see 25 Cyc. 403, n. 81; Ann. Cas. 1914C 997; Odgers, Libel and Slander (5th ed.), 197.